
ENGROSSED SUBSTITUTE SENATE BILL 5225

State of Washington

61st Legislature

2009 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline and Hargrove)

READ FIRST TIME 02/24/09.

1 AN ACT Relating to crimes against property; amending RCW 4.24.230,
2 9A.48.070, 9A.48.080, 9A.48.090, 9A.56.030, 9A.56.040, 9A.56.050,
3 9A.56.060, 9A.56.096, 9A.56.150, 9A.56.160, 9A.56.170, and 9A.56.350;
4 adding a new section to chapter 9.94A RCW; adding a new section to
5 chapter 3.50 RCW; adding a new section to chapter 3.66 RCW; adding a
6 new section to chapter 35.20 RCW; creating new sections; and
7 prescribing penalties.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** (1) An organized retail crime task force is
10 created for the purpose of monitoring the effects of raising the
11 monetary threshold amounts differentiating the various degrees of
12 property crimes in Washington state. The task force is directed to
13 examine the impact of raising these values on (a) the retail industry;
14 (b) the district and municipal courts; and (c) the county and city
15 offices of the prosecuting attorney. The task force shall also examine
16 whether civil immunity should be granted for retailers who create a
17 common database of individuals suspected of theft and who deliver the
18 database to law enforcement agencies. In addition, the task force is

1 charged with identifying any policies or procedures which would enhance
2 the successful investigation and prosecution of property crimes in
3 Washington state.

4 (2) The task force shall consist of the following members:

5 (a) One member from each of the two largest caucuses of the house
6 of representatives, appointed by the speaker of the house of
7 representatives;

8 (b) One member from each of the two largest caucuses of the senate,
9 appointed by the president of the senate;

10 (c) One member appointed by the Washington association of
11 prosecuting attorneys;

12 (d) One member appointed by the Washington association of criminal
13 defense lawyers;

14 (e) One member appointed by the association of Washington cities;

15 (f) One member appointed by the association of Washington counties;

16 (g) One member appointed by the food industry association of
17 Washington representing retail grocers who own a single store or a
18 regional chain with less than ten million five hundred thousand dollars
19 in gross revenues per location annually; and

20 (h) One member appointed by the Washington association of retailers
21 representing a retailer who owns a single store or a chain with one
22 million five hundred thousand dollars or more in gross revenues
23 annually.

24 The superior court judges association and the district and
25 municipal court judges association are each invited to select a judge
26 to be a member of the task force.

27 (3) The task force shall choose its chair from among its members
28 and may conduct meetings, select officers, and prescribe rules of
29 procedure.

30 (4) Staff for the task force will be provided by the staff of the
31 legislature.

32 (5) Legislative members of the task force shall not be reimbursed
33 for travel expenses. Nonlegislative members must seek reimbursement
34 for travel and other membership expenses through their respective
35 agencies or organizations.

36 (6) The task force is subject to the open public meetings act,
37 chapter 42.30 RCW.

1 (7) The task force shall report its findings and recommendations to
2 the appropriate committees of the legislature eighteen months after the
3 effective date of this section.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
5 to read as follows:

6 The sentencing guidelines commission shall review the monetary
7 threshold amounts differentiating the various degrees of property
8 crimes in Washington state to determine whether such amounts should be
9 modified. The sentencing guidelines commission shall report to the
10 legislature with its recommendations by November 1, 2014, and every
11 five years thereafter.

12 **Sec. 3.** RCW 4.24.230 and 1994 c 9 s 1 are each amended to read as
13 follows:

14 (1) An adult or emancipated minor who takes possession of any
15 goods, wares, or merchandise displayed or offered for sale by any
16 wholesale or retail store or other mercantile establishment without the
17 consent of the owner or seller, and with the intention of converting
18 such goods, wares, or merchandise to his or her own use without having
19 paid the purchase price thereof (~~((shall be))~~) is liable in addition to
20 actual damages, for a penalty to the owner or seller in the amount of
21 the retail value thereof not to exceed (~~((one))~~) two thousand eight
22 hundred fifty dollars, plus an additional penalty of not less than one
23 hundred dollars nor more than (~~((two))~~) six hundred thirty-eight dollars,
24 plus all reasonable attorney's fees and court costs expended by the
25 owner or seller. A customer who orders a meal in a restaurant or other
26 eating establishment, receives at least a portion thereof, and then
27 leaves without paying, is subject to liability under this section. A
28 person who shall receive any food, money, credit, lodging, or
29 accommodation at any hotel, motel, boarding house, or lodging house,
30 and then leaves without paying the proprietor, manager, or authorized
31 employee thereof, is subject to liability under this section.

32 (2) The parent or legal guardian having the custody of an
33 unemancipated minor who takes possession of any goods, wares, or
34 merchandise displayed or offered for sale by any wholesale or retail
35 store or other mercantile establishment without the consent of the
36 owner or seller and with the intention of converting such goods, wares,

1 or merchandise to his or her own use without having paid the purchase
2 price thereof, (~~shall be~~) is liable as a penalty to the owner or
3 seller for the retail value of such goods, wares, or merchandise not to
4 exceed (~~five~~) one thousand four hundred twenty-five dollars plus an
5 additional penalty of not less than one hundred dollars nor more than
6 (~~two~~) six hundred thirty-eight dollars, plus all reasonable
7 attorney's fees and court costs expended by the owner or seller. The
8 parent or legal guardian having the custody of an unemancipated minor,
9 who orders a meal in a restaurant or other eating establishment,
10 receives at least a portion thereof, and then leaves without paying, is
11 subject to liability under this section. The parent or legal guardian
12 having the custody of an unemancipated minor, who receives any food,
13 money, credit, lodging, or accommodation at any hotel, motel, boarding
14 house, or lodging house, and then leaves without paying the proprietor,
15 manager, or authorized employee thereof, is subject to liability under
16 this section. For the purposes of this subsection, liability shall not
17 be imposed upon any governmental entity, private agency, or foster
18 parent assigned responsibility for the minor child pursuant to court
19 order or action of the department of social and health services.

20 (3) Judgments and claims arising under this section may be
21 assigned.

22 (4) A conviction for violation of chapter 9A.56 RCW shall not be a
23 condition precedent to maintenance of a civil action authorized by this
24 section.

25 (5) An owner or seller demanding payment of a penalty under
26 subsection (1) or (2) of this section shall give written notice to the
27 person or persons from whom the penalty is sought. The notice shall
28 state:

29 "IMPORTANT NOTICE: The payment of any penalty demanded of you does
30 not prevent criminal prosecution under a related criminal provision."

31 This notice shall be boldly and conspicuously displayed, in at
32 least the same size type as is used in the demand, and shall be sent
33 with the demand for payment of a penalty described in subsection (1) or
34 (2) of this section.

35 **Sec. 4.** RCW 9A.48.070 and 1983 1st ex.s. c 4 s 1 are each amended
36 to read as follows:

1 (1) A person is guilty of malicious mischief in the first degree if
2 he or she knowingly and maliciously:

3 (a) Causes physical damage to the property of another in an amount
4 exceeding (~~(one)~~) five thousand (~~(five hundred)~~) dollars;

5 (b) Causes an interruption or impairment of service rendered to the
6 public by physically damaging or tampering with an emergency vehicle or
7 property of the state, a political subdivision thereof, or a public
8 utility or mode of public transportation, power, or communication; or

9 (c) Causes an impairment of the safety, efficiency, or operation of
10 an aircraft by physically damaging or tampering with the aircraft or
11 aircraft equipment, fuel, lubricant, or parts.

12 (2) Malicious mischief in the first degree is a class B felony.

13 **Sec. 5.** RCW 9A.48.080 and 1994 c 261 s 17 are each amended to read
14 as follows:

15 (1) A person is guilty of malicious mischief in the second degree
16 if he or she knowingly and maliciously:

17 (a) Causes physical damage to the property of another in an amount
18 exceeding (~~(two)~~) seven hundred fifty dollars; or

19 (b) Creates a substantial risk of interruption or impairment of
20 service rendered to the public, by physically damaging or tampering
21 with an emergency vehicle or property of the state, a political
22 subdivision thereof, or a public utility or mode of public
23 transportation, power, or communication.

24 (2) Malicious mischief in the second degree is a class C felony.

25 **Sec. 6.** RCW 9A.48.090 and 2003 c 53 s 71 are each amended to read
26 as follows:

27 (1) A person is guilty of malicious mischief in the third degree if
28 he or she:

29 (a) Knowingly and maliciously causes physical damage to the
30 property of another, under circumstances not amounting to malicious
31 mischief in the first or second degree; or

32 (b) Writes, paints, or draws any inscription, figure, or mark of
33 any type on any public or private building or other structure or any
34 real or personal property owned by any other person unless the person
35 has obtained the express permission of the owner or operator of the

1 property, under circumstances not amounting to malicious mischief in
2 the first or second degree.

3 (2)((~~a~~)) Malicious mischief in the third degree ((~~under~~
4 ~~subsection (1)(a) of this section is a gross misdemeanor if the damage~~
5 ~~to the property is in an amount exceeding fifty dollars.~~

6 (~~b~~) Malicious mischief in the third degree under subsection (1)(a)
7 of this section is a misdemeanor if the damage to the property is fifty
8 dollars or less.

9 (~~c~~) Malicious mischief in the third degree under subsection (1)(b)
10 of this section)) is a gross misdemeanor.

11 **Sec. 7.** RCW 9A.56.030 and 2007 c 199 s 3 are each amended to read
12 as follows:

13 (1) A person is guilty of theft in the first degree if he or she
14 commits theft of:

15 (a) Property or services which exceed(s) ((~~one~~)) five thousand
16 ((~~five hundred~~)) dollars in value other than a firearm as defined in
17 RCW 9.41.010;

18 (b) Property of any value, other than a firearm as defined in RCW
19 9.41.010 or a motor vehicle, taken from the person of another; or

20 (c) A search and rescue dog, as defined in RCW 9.91.175, while the
21 search and rescue dog is on duty.

22 (2) Theft in the first degree is a class B felony.

23 **Sec. 8.** RCW 9A.56.040 and 2007 c 199 s 4 are each amended to read
24 as follows:

25 (1) A person is guilty of theft in the second degree if he or she
26 commits theft of:

27 (a) Property or services which exceed(s) ((~~two~~)) seven hundred
28 fifty dollars in value but does not exceed ((~~one~~)) five thousand ((~~five~~
29 ~~hundred~~)) dollars in value, other than a firearm as defined in RCW
30 9.41.010 or a motor vehicle; or

31 (b) A public record, writing, or instrument kept, filed, or
32 deposited according to law with or in the keeping of any public office
33 or public servant; or

34 (c) An access device.

35 (2) Theft in the second degree is a class C felony.

1 **Sec. 9.** RCW 9A.56.050 and 1998 c 236 s 4 are each amended to read
2 as follows:

3 (1) A person is guilty of theft in the third degree if he or she
4 commits theft of property or services which (a) does not exceed (~~two~~)
5 seven hundred (~~and~~) fifty dollars in value, or (b) includes ten or
6 more merchandise pallets, or ten or more beverage crates, or a
7 combination of ten or more merchandise pallets and beverage crates.

8 (2) Theft in the third degree is a gross misdemeanor.

9 **Sec. 10.** RCW 9A.56.060 and 1982 c 138 s 1 are each amended to read
10 as follows:

11 (1) Any person who shall with intent to defraud, make, or draw, or
12 utter, or deliver to another person any check, or draft, on a bank or
13 other depository for the payment of money, knowing at the time of such
14 drawing, or delivery, that he or she has not sufficient funds in, or
15 credit with (~~said~~) the bank or other depository, to meet (~~said~~) the
16 check or draft, in full upon its presentation, (~~shall be~~) is guilty
17 of unlawful issuance of bank check. The word "credit" as used herein
18 shall be construed to mean an arrangement or understanding with the
19 bank or other depository for the payment of such check or draft, and
20 the uttering or delivery of such a check or draft to another person
21 without such fund or credit to meet the same shall be prima facie
22 evidence of an intent to defraud.

23 (2) Any person who shall with intent to defraud, make, or draw, or
24 utter, or deliver to another person any check, or draft on a bank or
25 other depository for the payment of money and who issues a stop-payment
26 order directing the bank or depository on which the check is drawn not
27 to honor (~~said~~) the check, and who fails to make payment of money in
28 the amount of the check or draft or otherwise arrange a settlement
29 agreed upon by the holder of the check within twenty days of issuing
30 (~~said~~) the check or draft (~~shall be~~) is guilty of unlawful issuance
31 of a bank check.

32 (3) When any series of transactions which constitute unlawful
33 issuance of a bank check would, when considered separately, constitute
34 unlawful issuance of a bank check in an amount of (~~two~~) seven hundred
35 fifty dollars or less because of value, and the series of transactions
36 are a part of a common scheme or plan, the transactions may be
37 aggregated in one count and the sum of the value of all of the

1 transactions shall be the value considered in determining whether the
2 unlawful issuance of a bank check is to be punished as a class C felony
3 or a gross misdemeanor.

4 (4) Unlawful issuance of a bank check in an amount greater than
5 ~~((two))~~ seven hundred fifty dollars is a class C felony.

6 (5) Unlawful issuance of a bank check in an amount of ~~((two))~~ seven
7 hundred fifty dollars or less is a gross misdemeanor and shall be
8 punished as follows:

9 (a) The court shall order the defendant to make full restitution;

10 (b) The defendant need not be imprisoned, but the court shall
11 impose a ~~((minimum))~~ fine of ~~((five))~~ up to one thousand one hundred
12 twenty-five dollars. Of the fine imposed, at least ~~((fifty))~~ three
13 hundred seventy-five dollars or an amount equal to one hundred fifty
14 percent of the amount of the bank check, whichever is greater, shall
15 not be suspended or deferred. Upon conviction for a second offense
16 within any twelve-month period, the court may not suspend or defer
17 ~~((only that))~~ any portion of the fine ~~((which is in excess of five~~
18 ~~hundred dollars))~~.

19 **Sec. 11.** RCW 9A.56.096 and 2007 c 199 s 17 are each amended to
20 read as follows:

21 (1) A person who, with intent to deprive the owner or owner's
22 agent, wrongfully obtains, or exerts unauthorized control over, or by
23 color or aid of deception gains control of personal property that is
24 rented, leased, or loaned by written agreement to the person, is guilty
25 of theft of rental, leased, lease-purchased, or loaned property.

26 (2) The finder of fact may presume intent to deprive if the finder
27 of fact finds either of the following:

28 (a) That the person who rented or leased the property failed to
29 return or make arrangements acceptable to the owner of the property or
30 the owner's agent to return the property to the owner or the owner's
31 agent within seventy-two hours after receipt of proper notice following
32 the due date of the rental, lease, lease-purchase, or loan agreement;
33 or

34 (b) That the renter, lessee, or borrower presented identification
35 to the owner or the owner's agent that was materially false,
36 fictitious, or not current with respect to name, address, place of
37 employment, or other appropriate items.

1 (3) As used in subsection (2) of this section, "proper notice"
2 consists of a written demand by the owner or the owner's agent made
3 after the due date of the rental, lease, lease-purchase, or loan
4 period, mailed by certified or registered mail to the renter, lessee,
5 or borrower at: (a) The address the renter, lessee, or borrower gave
6 when the contract was made; or (b) the renter, lessee, or borrower's
7 last known address if later furnished in writing by the renter, lessee,
8 borrower, or the agent of the renter, lessee, or borrower.

9 (4) The replacement value of the property obtained must be utilized
10 in determining the amount involved in the theft of rental, leased,
11 lease-purchased, or loaned property.

12 (5)(a) Theft of rental, leased, lease-purchased, or loaned property
13 is a class B felony if the rental, leased, lease-purchased, or loaned
14 property is valued at ~~((one))~~ five thousand ~~((five hundred))~~ dollars or
15 more.

16 (b) Theft of rental, leased, lease-purchased, or loaned property is
17 a class C felony if the rental, leased, lease-purchased, or loaned
18 property is valued at ~~((two))~~ seven hundred fifty dollars or more but
19 less than ~~((one))~~ five thousand ~~((five hundred))~~ dollars.

20 (c) Theft of rental, leased, lease-purchased, or loaned property is
21 a gross misdemeanor if the rental, leased, lease-purchased, or loaned
22 property is valued at less than ~~((two))~~ seven hundred fifty dollars.

23 (6) This section applies to rental agreements that provide that the
24 renter may return the property any time within the rental period and
25 pay only for the time the renter actually retained the property, in
26 addition to any minimum rental fee, to lease agreements, to lease-
27 purchase agreements as defined under RCW 63.19.010, and to vehicles
28 loaned to prospective purchasers borrowing a vehicle by written
29 agreement from a motor vehicle dealer licensed under chapter 46.70 RCW.
30 This section does not apply to rental or leasing of real property under
31 the residential landlord-tenant act, chapter 59.18 RCW.

32 **Sec. 12.** RCW 9A.56.150 and 2007 c 199 s 6 are each amended to read
33 as follows:

34 (1) A person is guilty of possessing stolen property in the first
35 degree if he or she possesses stolen property, other than a firearm as
36 defined in RCW 9.41.010 or a motor vehicle, which exceeds ~~((one))~~ five
37 thousand ~~((five hundred))~~ dollars in value.

1 (2) Possessing stolen property in the first degree is a class B
2 felony.

3 **Sec. 13.** RCW 9A.56.160 and 2007 c 199 s 7 are each amended to read
4 as follows:

5 (1) A person is guilty of possessing stolen property in the second
6 degree if:

7 (a) He or she possesses stolen property, other than a firearm as
8 defined in RCW 9.41.010 or a motor vehicle, which exceeds ((two)) seven
9 hundred fifty dollars in value but does not exceed ((one)) five
10 thousand ((five hundred)) dollars in value; or

11 (b) He or she possesses a stolen public record, writing or
12 instrument kept, filed, or deposited according to law; or

13 (c) He or she possesses a stolen access device.

14 (2) Possessing stolen property in the second degree is a class C
15 felony.

16 **Sec. 14.** RCW 9A.56.170 and 1998 c 236 s 2 are each amended to read
17 as follows:

18 (1) A person is guilty of possessing stolen property in the third
19 degree if he or she possesses (a) stolen property which does not exceed
20 ((two)) seven hundred fifty dollars in value, or (b) ten or more stolen
21 merchandise pallets, or ten or more stolen beverage crates, or a
22 combination of ten or more stolen merchandise pallets and beverage
23 crates.

24 (2) Possessing stolen property in the third degree is a gross
25 misdemeanor.

26 **Sec. 15.** RCW 9A.56.350 and 2006 c 277 s 2 are each amended to read
27 as follows:

28 (1) A person is guilty of organized retail theft if he or she:

29 (a) Commits theft of property with a value of at least ((two))
30 seven hundred fifty dollars from a mercantile establishment with an
31 accomplice; or

32 (b) Possesses stolen property, as defined in RCW 9A.56.140, with a
33 value of at least ((two)) seven hundred fifty dollars from a mercantile
34 establishment with an accomplice.

1 (2) A person is guilty of organized retail theft in the first
2 degree if the property stolen or possessed has a value of ~~((one))~~ five
3 thousand ~~((five-hundred))~~ dollars or more. Organized retail theft in
4 the first degree is a class B felony.

5 (3) A person is guilty of organized retail theft in the second
6 degree if the property stolen or possessed has a value of at least
7 ~~((two))~~ seven hundred fifty dollars, but less than ~~((one))~~ five
8 thousand ~~((five-hundred))~~ dollars. Organized retail theft in the
9 second degree is a class C felony.

10 (4) For purposes of this section, a series of thefts committed by
11 the same person from one or more mercantile establishments over a
12 period of one hundred eighty days may be aggregated in one count and
13 the sum of the value of all the property shall be the value considered
14 in determining the degree of the organized retail theft involved.
15 Theft committed by the same person in different counties that have
16 been aggregated in one county may be prosecuted in any county in which
17 any one of the thefts occurred.

18 (5) The mercantile establishment or establishments whose property
19 is alleged to have been stolen may request that the charge be
20 aggregated with other thefts of property about which the mercantile
21 establishment or establishments is aware. In the event a request to
22 aggregate the prosecution is declined, the mercantile establishment or
23 establishments shall be promptly advised by the prosecuting
24 jurisdiction making the decision to decline aggregating the prosecution
25 of the decision and the reasons for such decision.

26 NEW SECTION. Sec. 16. A new section is added to chapter 3.50 RCW
27 to read as follows:

28 Before a sentence is imposed upon a defendant convicted of a crime
29 against property, the court or the prosecuting authority shall check
30 existing judicial information systems to determine the criminal history
31 of the defendant.

32 NEW SECTION. Sec. 17. A new section is added to chapter 3.66 RCW
33 to read as follows:

34 Before a sentence is imposed upon a defendant convicted of a crime
35 against property, the court or the prosecuting authority shall check

1 existing judicial information systems to determine the criminal history
2 of the defendant.

3 NEW SECTION. **Sec. 18.** A new section is added to chapter 35.20 RCW
4 to read as follows:

5 Before a sentence is imposed upon a defendant convicted of a crime
6 against property, the court or the prosecuting authority shall check
7 existing judicial information systems to determine the criminal history
8 of the defendant.

9 NEW SECTION. **Sec. 19.** This act applies to crimes committed on or
10 after September 1, 2009.

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